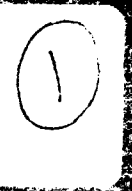


United States Central Accounting Office

Report to the Honorable  
William V. Roth, Jr., U.S. Senate

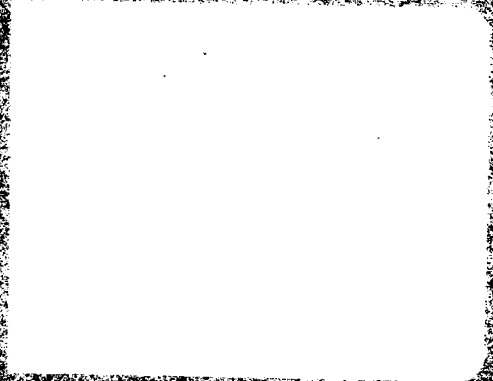


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# CONTRACT PRICING

DOD's Competition  
Reports to the  
Congress Could Be  
More Clear



91-09505



United States  
General Accounting Office  
Washington, D.C. 20548

National Security and  
International Affairs Division

B-243987

July 23, 1991

The Honorable William V. Roth, Jr.  
United States Senate

Dear Senator Roth:

This report responds to your request that we evaluate the accuracy of competition statistics included in Department of Defense (DOD) reports to the Congress to determine whether the statistics properly show the extent of competition in defense procurement. It also contains information on contracting officers' use of noncompetitive pricing safeguards to negotiate contracts that DOD has reported as competitive.

## Background

DOD spends billions of dollars annually to purchase products and services from the private sector. Historically, the Congress has required that purchases by federal agencies be based on competition in the marketplace, whenever practicable.

The Congress enacted the Competition in Contracting Act (CICA) of 1984 (Public Law 98-369) to increase the use of full and open competitive procedures and limit unnecessary sole-source contracting. To give visibility in these areas, executive agencies were required to submit annual reports to the Congress addressing (1) the actions the head of the agency intended to take during the next fiscal year to increase competition for contracts and reduce the number and dollar value of noncompetitive contracts and (2) the accomplishments of the competition advocate during the previous fiscal year. The congressional reporting requirement pertained to the competition statistics for the 5 fiscal years from 1985 to 1989.

Office of Federal Procurement Policy (OFPP) provided executive agencies guidance on reporting competition statistics to the Congress. OFPP directed executive agencies to report accomplishments under the heading entitled Actions Available for Competition in three major categories:

- actions competed,
- follow-on to competed actions, and
- actions not competed.

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OFPP defined the actions competed category to include contracts involving

- full and open competition,
- full and open competition with only one responsible offer/bid received, and
- less than full and open competition with more than one offer/bid received.

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## Results in Brief

DOD has reported its competition statistics to the Congress in accordance with OFPP guidance. This guidance addresses competition in the context of CICA and, therefore, primarily focuses on the degree of competition sought through contract solicitation procedures.

In its reports to the Congress, DOD reported follow-on and one-bid contracts as "associated with competitive actions" and included them in its competitive statistics. Although these contracts may be associated with competitive actions, they are not competitive when viewed in the context of achieving actual competition between two or more responsive, responsible bidders.

Our review of a sample of follow-on and one-bidder contracts showed that DOD contracting officers responsible for awarding such contracts treated them as noncompetitive contracts and used appropriate safeguards designed to ensure the negotiation of fair and reasonable prices.

CICA required executive agencies to report their competition statistics to the Congress for the 5 fiscal years from 1985 to 1989. Because that requirement has expired, this report makes no recommendations regarding DOD's competition reports.

Detailed information that clearly reports the competition statistics of federal agencies is available through the Federal Procurement Data System.

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## Extent of Competitive Awards Not Clearly Reported

The competition reports DOD submitted to the Congress showed an increasing rate of competition in defense procurement. For example, according to DOD's fiscal year 1987 transmittal letter to the Congress:

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"Seventy-eight percent of our contract dollars were associated with competitive actions. Of these, the Department-wide rate of competed procurement dollars in fiscal year 1987 was 60.3 percent. Another 17.7 percent of contract dollars were follow-on actions to initially competed contracts. Our rate of competed procurement is almost six percent higher than that of fiscal year 1986 and more than fifty percent higher than in fiscal year 1983".

In March 1989, the DOD Office of Inspector General reported that the annual competition reports overstated the percentage of contract dollars awarded on a competitive basis.<sup>1</sup> The Inspector General, after reviewing the fiscal years 1986 and 1987 reports, stated "...DOD reported to Congress that over 75 percent of DOD's contract dollars for FY [fiscal year] 1986 and FY 1987 were associated with competitive actions, when the actual percentage of competitive actions was less than 40 percent for both years."

The Inspector General cited a variety of causes for the overstated statistical data. The DOD Inspector General also reported that DOD prepared its competition statistics in accordance with OFPP guidance.

The Assistant Secretary of Defense (Production and Logistics) disagreed with the Inspector General's conclusion and stated:

"The major issue addressed in the audit is the allegation that the amount of competition that DOD achieves is grossly overstated by classifying as competitive those procurements which were issued using competitive procedures but which resulted in the submission of a bid or proposal by only one responsible source. The audit report concludes that competition was thus overstated by \$17 billion in FY 86. We strongly disagree with the conclusion. The Competition in Contracting Act (CICA) clearly emphasizes competition as a characteristic of solicitation procedures. In our experience, the benefits of competition are obtained when competitive solicitation procedures are used, even though only one source responds."

We also have two concerns about the competition reports DOD submitted to the Congress. First, DOD's statistics on contract dollars "associated with competitive actions" include follow-on contracts that are generally awarded to current incumbent producers on a noncompetitive basis. Therefore, follow-on contracts, by their nature, are not actions competed. Consequently, we do not believe follow-on contracts should be included in DOD's competition reports unless they involve the use of competitive solicitation procedures or actually involve competition between two or more responsive, responsible offerors.

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<sup>1</sup> Validity of Competition Statistics Being Reported by DOD, Office of the Inspector General, Mar. 28, 1989 (No. 89-062).

Second, OFPP guidance required statistics on actions competed to include contracts where competitive procedures were used but only one bid was received. We believe that while contracts in this category may meet the CICA requirement for competitive solicitation procedures, they are not contracts awarded through actual competition between at least two responsive, responsible bidders. DOD, on the other hand, contends that the benefits of competition are obtained when competitive solicitation procedures are used. We note that CICA requires executive agencies to maintain separate records on this type of procurement under the designation of "noncompetitive procurements using competitive procedures."

We believe that in defining actions competed, the OFPP guidance blurs the distinction between competitive solicitation procedures and actual competition involving more than one bidder. As a result, reports submitted using OFPP guidance could be misinterpreted, thus inflating the agencies' success in awarding contracts competitively. We believe that someone who is not familiar with CICA policy, or the OFPP guidance, could misinterpret the agencies' statistics.

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## DOD Contracting Officers Used Appropriate Pricing Safeguards

We reviewed 15 contracts—10 follow-on contracts and 5 where only one bid was received—to determine whether DOD contracting officers treated the procurements as competitive or noncompetitive. For the purpose of negotiating fair and reasonable prices, the contracting officers treated all 15 procurements as noncompetitive contracts and used the appropriate safeguards. On 9 of the 10 follow-on contracts, the contracting officers used the safeguard of requiring each sole-source contractor to submit a Certificate of Current Cost or Pricing Data. This is a certification by the contractor that data submitted in support of contract negotiations was accurate, complete, and current as of the date price agreement was reached, as required by the Truth in Negotiations Act (Public Law 87-653, as amended). The contracting officer waived the certificate requirement on the 10th contract after the Defense Contract Audit Agency and an Air Force factfinding team reviewed the contractor's request for a waiver based on a determination that the item purchased qualified as a commercial catalog item. DOD contracting officers also required contractors to submit certificates on the five contracts where only one bidder responded.

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## Federal Procurement Data System

Detailed information on DOD's procurement statistics is available through the Federal Procurement Data System, which started collecting data on October 1, 1978. Its annual report—the Federal Procurement

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Report—provides a detailed analysis of federal agencies' contract actions. This analysis shows 78 characteristics of the agencies' contracting activities, including the contract actions (and contract dollars) where full and open competition was used but only one bid was received and those that were follow-on actions to a competed action.

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## Scope and Methodology

To evaluate DOD's competition statistics, we analyzed the Inspector General's March 1989 report and DOD's response to it. We discussed the report with Inspector General officials and DOD officials. We also reviewed the legislative history surrounding CICA and its reporting requirements and analyzed OFPP guidance for reporting competition statistics and the annual report of the Federal Procurement Data System.

To determine whether DOD contracting officers used appropriate pricing safeguards, we selected a judgmental sample of procurement actions from DOD's DD350 data base and those reviewed by the DOD Inspector General. We reviewed the contract negotiation documents to determine whether a certificate of cost or pricing data was obtained and interviewed DOD officials, including, in some cases, the contracting officers responsible for awarding the contracts. We did not independently verify or validate the accuracy of the DD350 data base or the Federal Procurement Data System reports.

We made our review between November 1989 and April 1991 in accordance with generally accepted government auditing standards.

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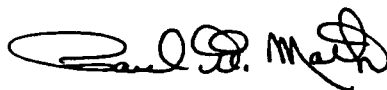
As agreed, we did not obtain written agency comments. However, we discussed the results of our work with responsible DOD officials and incorporated their comments as appropriate.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time, we will send copies to the Secretaries of Defense, the Air Force, the Army, and the Navy and the Director, Defense Logistics Agency. We will also send copies to interested parties and make copies available to others on request.

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Please contract me at (202) 275-8400 if you or your staff have any questions concerning this report. The staff who made major contributions to this report were David E. Cooper, Assistant Director, John L. Carter, Evaluator-in-Charge, and Shirley E. Todd and Mary W. Deese, Staff Evaluators.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul F. Math". The signature is stylized with a large initial "P" and a cursive "Math".

Paul F. Math  
Director, Research, Development,  
Acquisition, and Procurement Issues